



DOCKET NO. STEU-2418

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

R Kent
3/1/02
#16/Reply
Brief

Applicants: Taggart

Examiner: Tawfik, S.

Serial No.: 09/306,552

Art Unit: 3721

Filed: 05/06/99

For: **METHOD AND APPARATUS FOR ASEPTIC PACKAGING**

Commissioner for Patents
Washington, D.C. 20231

RECEIVED
FEB 28 2002
TC 3700 MAIL ROOM

REPLY BRIEF OF APPELLANT

This Reply Brief, which addresses issues raised in Examiner's Answer mailed December 18, 2001, generally discusses the Examiner's Response to Appellant's Arguments, specifically the Examiner's contention, at page 4, lines 4-9, that Gies (U.S. Patent 4,862,933) discloses a method for aseptic packaging and the Examiner's argument, at page 10, lines 5-10, that "Gies as modified by involving of [sic] routine skill in the art" would be considered aseptic.

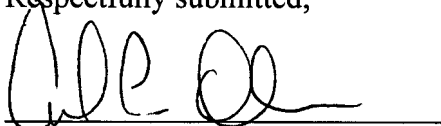
The Examiner has stated that Gies meets the definition and requirement of being aseptic and clearly discloses the filling and disinfecting of greater than 100 bottles per minute. Appellant disagrees. The Examiner has not disclosed each and every element of the claimed invention. Nowhere in Gies, is it disclosed that there is an aseptic operation. The Appellant's specification clearly states that in order to meet the definition of aseptic packaging, the packaging must *inter alia* take place in a sterile environment (See page 2, lines 13-17). Contrastingly, Gies is merely

teaching the pre-sterilization of containers by application of hydrogen peroxide. (See e.g., Col. 1, lines 26-30). This is only one step, of many, in order to meet the definition of aseptic (See page 2, line 15). The Examiner has merely made a naked allegation that Gies, *via routine skill*, can be modified in order to reach both a level of sterilization (i.e., aseptic, as defined in the specification) combined with a rate of filling bottles that has heretofore never been achieved previously in the art. A statement of mere speculation, on the part of the Examiner, with no support, nor rational as to how this modification can be so routine is specious. Personal opinions, without more, should be disallowed. Each and every claim limitation has not been taught or suggested by the prior art. The Examiner has failed to provide a *prima facie* case as to why it would be obvious to perform the teaching of Gies in an aseptic environment. Thus, the Examiner's burden has not been met and his argument must fail.

Summary

In summary, based upon the preceding argument, Appellant respectfully believes that Gies does not teach or suggest aseptic packaging.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Arlen L. Olsen', written over a horizontal line.

Arlen L. Olsen
Attorney For Appellant
Registration No. 37,543

Dated: February 19, 2002

Schmeiser, Olsen & Watts
3 Lear Jet Lane - Suite 201
Latham, New York 12110
(518) 220-1850